

Chapter 176

(Senate Bill 114)

AN ACT concerning

Environment – Controlled Hazardous Substance Driver Certification – Elimination

FOR the purpose of repealing a requirement that the Department of the Environment certify certain drivers of controlled hazardous substance vehicles; repealing a requirement that certain drivers of controlled hazardous substance vehicles carry a certain certificate; repealing requirements that certain drivers submit certain evidence and pay a certain fee; altering a certain definition; repealing a certain definition; requiring the Department to conduct a certain review in consultation with certain officials and to report its findings and recommendations to certain committees of the General Assembly on or before a certain date; and generally relating to the elimination of controlled hazardous substance driver certificates.

BY repealing and reenacting, with amendments,
Article – Environment
Section 7–201, 7–249, 7–253, and 7–257
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 7–252
Annotated Code of Maryland
(2007 Replacement Volume and 2011 Supplement)
(As enacted by Chapter 240 of the Acts of the General Assembly of 1982)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

7–201.

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Controlled hazardous substance” means:

(1) Any hazardous substance that the Department identifies as a controlled hazardous substance under this subtitle; or

(2) Low-level nuclear waste.

(c) (1) “Controlled hazardous substance facility” means a disposal structure, system, or geographic area, designated by the Department for treatment, storage related to treatment or disposal, or disposal of controlled hazardous substances.

(2) “Controlled hazardous substance facility” includes:

(i) A low-level nuclear waste facility; and

(ii) An operating landfill that, under § 7-232(b) of this subtitle, has a permit equivalent to a facility permit.

(d) “Controlled hazardous substance hauler” means a person who has a hauler certificate issued by the Department to transport controlled hazardous substances.

(e) “Controlled hazardous substance vehicle” means a vehicle that the Department has certified as suitable for use to transport controlled hazardous substances.

(f) “Controlled hazardous substance vehicle driver” means a person [whom the Department has certified to] **WHO** [operate] **OPERATES** a controlled hazardous substance vehicle.

(g) “Council” means the Controlled Hazardous Substances Advisory Council.

(h) “Discharge” means:

(1) The addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of this State; or

(2) The placing of a pollutant in a location where the pollutant is likely to pollute.

(i) [“Driver certificate” means a certificate issued by the Department for a person to be a controlled hazardous substance vehicle driver.

(j)] “Facility permit” means a permit issued by the Department to establish, operate, or maintain a controlled hazardous substance facility.

[(k)] (J) “Federal act” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended through January 1, 2003.

[(l)] (K) “Hauler certificate” means a certificate issued by the Department that permits a person to be a controlled hazardous substance hauler.

[(m)] (L) “Hazardous substance” means any substance:

(1) Defined as a hazardous substance under § 101(14) of the federal act; or

(2) Identified as a controlled hazardous substance by the Department in the Code of Maryland Regulations.

[(n)] (M) “Incineration” means thermal treatment or decomposition of a waste heat.

[(o)] (N) “Lender” means a person who is:

(1) A holder of a mortgage or deed of trust on a site or a security interest in property located on a site; or

(2) A holder of a mortgage or deed of trust who acquires title through foreclosure or deed in lieu of foreclosure.

[(p)] (O) “Low-level nuclear waste” means a substance that:

(1) Contains or is contaminated with radioactive material emitting primarily beta or gamma radiation; and

(2) Is neither transuranic waste nor high-level nuclear waste.

[(q)] (P) “Low-level nuclear waste facility” means a controlled hazardous substance facility for low-level nuclear waste.

[(r)] (Q) “Low-level nuclear waste facility permit” means a facility permit issued by the Department for a low-level nuclear waste facility.

[(s)] (R) “Person” includes the federal government, this State, any county, municipal corporation, or other political subdivision of this State, and any of their units.

[(t)] (S) “Release” means the addition, introduction, leaking, spilling, emitting, discharging, escaping, or leaching of any hazardous substance into the environment.

[(u)] (T) (1) “Responsible person” means any person who:

(i) Is the owner or operator of a vehicle or a site containing a hazardous substance;

(ii) At the time of disposal of any hazardous substance, was the owner or operator of any site at which the hazardous substance was disposed;

(iii) By contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such person, by any other party or entity, at any site owned or operated by another party or entity and containing such hazardous substances; or

(iv) Accepts or accepted any hazardous substance for transport to a disposal or treatment facility or any sites selected by the person.

(2) “Responsible person” does not include:

(i) A person who can establish by a preponderance of the evidence that at the time the person acquired an interest in a site containing a hazardous substance the person did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the site; however, any person claiming an exemption from liability under this subparagraph must establish that the person had no reason to know, in accordance with § 101(35)(B) of the federal act, and that the person satisfied the requirements of § 107(b)(3)(a) of the federal act;

(ii) A person who acquired a property containing a hazardous substance by inheritance or bequest at the death of the transferor;

(iii) A person who, without participating in the day-to-day management of a site containing a hazardous substance, holds indicia of ownership in the site or in property located on the site primarily to protect a valid and enforceable lien unless that person directly causes the discharge of a hazardous substance on or from the site;

(iv) A holder of a mortgage or deed of trust on a site containing a hazardous substance or a holder of a security interest in property located on the site who does not participate in the day-to-day management of the site unless that holder directly causes the discharge of a hazardous substance on or from the site;

(v) A fiduciary who has legal title to a site containing a hazardous substance or to property located on the site containing a hazardous substance for purpose of administering an estate or trust of which the site or property located on the site is a part unless the fiduciary;

1. Participates in the day-to-day management of the site or property; or

2. Directly causes the discharge of a hazardous substance on or from the site;

(vi) A holder of a mortgage or deed of trust who acquires title to a site containing a hazardous substance through foreclosure or deed in lieu of foreclosure who:

1. Does not participate in the day-to-day management of the site; and

2. Does not directly cause the discharge of a hazardous substance on or from the site;

(vii) Except in the case of gross negligence or willful misconduct, an owner or operator who is:

1. A state, county, or municipal government;

2. Any other political subdivision of the State; or

3. Any unit of a state, county, or municipal government or any other political subdivision;

(viii) A holder of a mortgage or deed of trust who acquires title to an eligible property as defined in Subtitle 5 of this title subject to a written agreement in accordance with Subtitle 5 of this title provided that the holder complies with the requirements, prohibitions, and conditions of the agreement;

(ix) Subject to paragraph (3) of this subsection, a lender who extends credit for the performance of removal or remedial actions conducted in accordance with requirements imposed under this title who:

1. Has not caused or contributed to a release of hazardous substances; and

2. Previous to extending that credit, is not a responsible person at the site;

(x) Subject to paragraph (3) of this subsection, a lender who takes action to protect or preserve a mortgage or deed of trust on a site or a security interest in property located on a site at which a release or threatened release of a hazardous substance has occurred, by stabilizing, containing, removing, or preventing

the release of a hazardous substance in a manner that does not cause or contribute to a release or significantly increase the threat of release of a hazardous substance at the site if:

1. The lender provides advance written notice of its actions to the Department or in the event of an emergency in which action is required within 2 hours, provides notice by telephone;

2. The lender, previous to taking the action, is not a responsible person for the site; and

3. The action taken does not violate a provision of this article; or

(xi) A person who receives a response action plan approval letter as an inculpable person or the person's successor in title who is also an inculpable person under Subtitle 5 of this title and who does not cause or contribute to new contamination or exacerbate existing contamination as provided in §§ 7-505 and 7-514 of this title.

(3) A lender taking action to protect or preserve a mortgage or deed of trust or security interest in a property located on a site, who causes or contributes to a release of a hazardous substance shall be liable solely for costs incurred as a result of the release which the lender caused or to which the lender contributed unless the lender was a responsible person prior to taking the action.

(4) (i) Paragraph (2)(i) of this subsection does not affect the liability of a previous owner or previous operator of a site containing a hazardous substance if the previous owner or previous operator is a responsible person under paragraph (1)(ii) of this subsection.

(ii) Notwithstanding paragraph (2)(i) of this subsection, a person shall be treated as a responsible person if the person:

1. Obtained actual knowledge of the release or threatened release of a hazardous substance at a site when the person owned the real property; and

2. Transferred ownership of the property after June 30, 1991 without disclosing this knowledge to the transferee.

(iii) Nothing in paragraph (2)(i) of this subsection shall affect the liability under this subtitle of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at a site which is the subject of the action relating to the site if at the time of the act or

omission the person knew or had reason to know that the act or omission would cause or contribute to the release or threatened release of a hazardous substance.

(5) Notwithstanding paragraph (2)(ii) of this subsection, a person shall be treated as a responsible person if the person:

(i) Knew or had reason to know of the release or threatened release of a hazardous substance at the site; and

(ii) Transferred ownership of the property after June 30, 1991 without disclosing this knowledge to the transferee.

(6) (i) For purposes of paragraph (2)(iii), (iv), (v), and (vi) of this subsection, "management" means directing or controlling operations, production or treatment of a hazardous substance, storage or disposal of a hazardous substance, or remediation of a hazardous substance release.

(ii) "Management" does not include rendering advice on financial matters, rendering financial assistance, or actions taken to protect or secure the site or property located on the site if the advice, assistance, or actions do not involve the treatment, storage, or disposal of a hazardous substance or remediation of a hazardous substance release.

(7) A person who owns real property is not considered an owner or operator of a vehicle or site containing a hazardous substance under paragraph (1)(i) of this subsection solely by reason of contamination from a contiguous or otherwise similarly situated real property if:

(i) The person does not own the contiguous or otherwise similarly situated real property;

(ii) The person's real property is or may be contaminated by a release or threatened release of a hazardous substance from the contiguous to or otherwise similarly situated real property; and

(iii) The person meets the requirements of Section 107(q) of the federal act and any regulations adopted by the Department implementing or interpreting the requirements of that section.

[(v)] (U) (1) "Solid waste" means any:

(i) Abandoned material or substance which is disposed of, burned, or incinerated or accumulated, stored, or treated before or in lieu of being disposed of, burned, or incinerated;

(ii) Material or substance which is recycled or accumulated, stored, or treated before recycling; or

(iii) Material or substance which is considered inherently waste-like.

(2) “Solid waste” does not include:

(i) Domestic sewage that passes through a sewer system to a publicly owned treatment work for treatment;

(ii) Industrial wastewater discharges that are point source discharges permitted under §§ 9-324 through 9-332 of this article;

(iii) Irrigation return flows;

(iv) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process; or

(v) Material that is excluded by any rule or regulation adopted under this subtitle.

~~[(w)]~~ **(V)** “Transuranic waste” means waste material that is measured or assumed to contain at least 10 nanocuries or more of transuranic activity per gram of waste.

~~[(x)]~~ **(W)** “Treatment” means any method, technique, or process, including neutralization, that is designed to change the physical, chemical, or biological character or composition of any controlled hazardous substance so as to neutralize or render the waste nonhazardous, safer for transport, or reduced in volume.

~~[(y)]~~ **(X)** “Vehicle certificate” means a certificate issued by the Department for a vehicle to be a controlled hazardous substance vehicle.

7-249.

(a) A person may not transport any controlled hazardous substance from any source in this State or to any controlled hazardous substance facility in this State unless:

(1) The person holds a hauler certificate; **AND**

(2) A vehicle certificate has been issued for the transporting vehicle[;

and

(3) A driver certificate has been issued for the vehicle driver].

(b) This section does not apply to the transportation of any controlled hazardous substance that is:

- (1) Used for residential purposes; or
- (2) Regulated by the State Department of Agriculture.

[(c) The requirement of a driver certificate in subsection (a) of this section does not apply to persons transporting hazardous waste generated and disposed of on private property, if the hazardous waste is transported over roads maintained by the generator or disposer.]

7-252.

(a) Each controlled hazardous substance hauler:

(1) Shall maintain a bond or other security that the Department considers sufficient to indemnify this State for abatement of any pollution that may result from the improper transportation of a controlled hazardous substance;

(2) Shall pay an annual vehicle certificate fee set by the Department but not more than \$50;

(3) When transporting any controlled hazardous substance, shall:

(i) Carry the manifest [and the driver certificate] in the cab of the controlled hazardous substance vehicle; and

(ii) Display prominently the vehicle certificate or affix the vehicle certificate to the outside of the left door of the cab of the controlled hazardous substance vehicle;

(4) May not transport a controlled hazardous substance unless the controlled hazardous substance is labeled properly and in secure containers in accordance with the rules and regulations of the Department that apply to that particular controlled hazardous substance;

(5) On the request of any police officer, shall stop the controlled hazardous substance vehicle and display to the police officer all required documentation and allow inspection and sampling of the controlled hazardous substance to determine if there is a violation of:

(i) The provisions of the vehicle certificate; **OR**

(ii) [The provisions of a driver certificate; or

(iii)] Any federal or state law;

(6) Except under the supervision of the Department during an emergency, may not remove the controlled hazardous substance from the controlled hazardous substance vehicle, or treat, store for any period of time, or mix any controlled hazardous substance except in a controlled hazardous substance facility; and

(7) Shall report periodically, on a form required by the Department, the following information about shipments of controlled hazardous substances:

- (i) The source of the controlled hazardous substance;
- (ii) The nature of the controlled hazardous substance; and
- (iii) The disposal destination.

(b) [(1) A driver certificate authorizes its holder to operate a vehicle transporting hazardous substances while the certificate is effective.

(2)] Each controlled hazardous substance vehicle driver[:

(i) Shall submit to the Department evidence that the person has received adequate training in the proper and safe handling of controlled hazardous substances;

(ii) Shall pay an annual driver certificate fee set by the Department but not more than \$20; and

(iii) When], **WHEN** transporting any controlled hazardous substance, shall comply with subsection (a)(3), (4), (5), and (6) of this section and all applicable State rules and regulations.

7-253.

If a person who generates a controlled hazardous substance desires to have it transported to a controlled hazardous substance facility, the person:

(1) Except as is otherwise required by federal or State law, shall label the controlled hazardous substance as required by the rules and regulations of the Department;

(2) Shall provide for each controlled hazardous substance vehicle a manifest that describes the controlled hazardous substance, including volume and chemical, physical, and biological characteristics;

(3) Shall require evidence of a hauler certificate[, a driver certificate,] and a vehicle certificate;

(4) May contract for treatment, storage, or disposal of a controlled hazardous substance only with:

(i) A facility permit holder; or

(ii) A controlled hazardous substance hauler who has a valid contract with a controlled hazardous substance facility for treatment, storage, or disposal of controlled hazardous substances; and

(5) Shall report, from time to time on the form the Department requires, the following information about shipments of controlled hazardous substances:

(i) Source;

(ii) Name of the controlled hazardous substance hauler;

(iii) Destination intended by the controlled hazardous substance hauler at the time of shipment;

(iv) Volume; and

(v) Nature.

7-257.

(a) In accordance with the Administrative Procedure Act and after notice and hearing, the Department may suspend or revoke any facility permit, hauler certificate, [driver certificate,] or vehicle certificate for violation of any federal or State law, rule, or regulation that relates to controlled hazardous substances.

(b) The Department may revoke any facility permit issued under this subtitle if the Department finds that:

(1) False or inaccurate information was contained in the application;

(2) Conditions or requirements of the facility permit have been or are about to be violated;

(3) Substantial deviation from plans, specifications, or requirements has occurred;

(4) The Department has been refused entry to the premises for the purpose of inspecting to insure compliance with the conditions of the facility permit;

(5) A change in conditions exists that requires temporary or permanent reduction or elimination of any permitted discharge;

(6) Any State or federal water quality standard or effluent limitation has been or is threatened to be violated; or

(7) Any other good cause exists for revoking the permit.

SECTION 2. AND BE IT FURTHER ENACTED, That the Department of the Environment:

(1) shall conduct a review, in consultation with federal and State transportation officials, relating to the efficiency and regulatory consistency of its controlled hazardous substance vehicle certification process; and

(2) on or before December 15, 2012, shall report its findings and recommendations, in accordance with § 2-1246 of the State Government Article, to the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.